

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. IP99-1692 C-M/S
)	
SOUTHERN INDIANA GAS AND)	
ELECTRIC COMPANY,)	
)	
Defendant.)	
)	
)	

AMENDED COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges:

NATURE OF THE ACTION

- a. This is a civil action brought against Southern Indiana Gas and Electric Company (“the Defendant”) pursuant to Sections 113 and 167 of the Clean Air Act (“the Act”), 42 U.S.C. § 7413 and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration (“PSD”) provisions of the Act, 42 U.S.C. §§ 7470-92, the New Source Performance Standards (“NSPS”) of the Act, 42 U.S.C. § 7411, and the federally approved and enforceable Indiana State

Implementation Plan (“Indiana SIP”). Numerous times, Defendant modified, and thereafter operated, its electric generating units at F. B. Culley Station coal-fired electricity generating power plant in Warrick County, Indiana without first obtaining appropriate permits authorizing construction of modifications at these units and without installing the best available control technology to control emissions of nitrogen oxides, sulfur dioxide, and particulate matter, as the Act, applicable federal regulations and the Indiana SIP require.

2. As a result of Defendant’s operation of the power plant following these unlawful modifications and the absence of appropriate controls, massive amounts of sulfur dioxide, nitrogen oxides, and particulate matter have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from this plant. Defendant’s violations, alone and in combination with similar violations at other coal-fired electric power plants, have been significant contributors to some of the most severe environmental problems facing the nation today. An order of this Court directing this Defendant, forthwith, to install and operate the best available technology to control these pollutants, in conjunction with orders being sought in similar cases involving other coal-fired electric power plants in the Midwest and southern United States being filed by the United States will produce an immediate, dramatic improvement in the quality of air breathed by millions of Americans. It will reduce illness, protect lakes and streams from further degradation due to the fallout from acid rain, and allow the environment to restore itself following years, and in some cases decades, of illegal emissions.

3. Sulfur dioxide, nitrogen oxides, and particulate matter when emitted into the air can each have adverse environmental and health impacts. Electric utility plants collectively account for about 70

percent of annual sulfur dioxide emissions and 30 percent of nitrogen oxides emissions in the United States. Sulfur dioxide ("SO₂") interacts in the atmosphere to form sulfate aerosols, which may be transported long distances through the air. Most sulfate aerosols are particles that can be inhaled. In the eastern United States, sulfate aerosols make up about 25 percent of the inhalable particles and, according to recent studies, high levels of sulfate aerosols are associated with increased sickness and mortality from lung disorders, such as asthma and bronchitis. Lowering sulfate aerosol emissions from electric utility plants may significantly reduce the incidence and the severity of asthma and bronchitis and associated hospital admissions and emergency room visits.

4. Nitrogen oxides ("NO_x") have numerous adverse effects on health and welfare. NO_x reacts with other pollutants and sunlight to form ground-level ozone, which scientists have long recognized as being harmful to human health and causing environmental damage. Ozone causes decreases in lung function (especially among children who are active outdoors) and respiratory problems leading to increased hospital admissions and emergency room visits. Ozone may inflame and possibly cause permanent damage to people's lungs. In addition, ozone causes damage to vegetation. Nitrogen dioxide ("NO₂"), one type of NO_x, is a dangerous pollutant that can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken a person's immune system, causing increased susceptibility to pulmonary and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases have a heightened sensitivity to NO₂ exposure.

5. SO₂ and NO_x interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form of snow or sleet,

"acidifies" lakes and streams, making them uninhabitable for aquatic life, and it contributes to damage of trees at high elevations. Acid rain accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. SO₂ and NO_x gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and impact public health. In this civil action, and in other civil actions filed concurrent with it, the United States intends to reduce dramatically the amount of SO₂ and NO_x that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the United States is granted in this case, and in others being filed concurrent with it, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country. Stress to our forests from Maine to Georgia will be reduced. Deterioration of our historic buildings and monuments will be slowed. In addition, reductions in SO₂ and NO_x will reduce sulfates, nitrates, and ground level ozone, leading to improvements in public health.

6. Particulate matter is the term for solid or liquid particles found in the air. Smaller particulate matter of a diameter of 10 micrometers or less is referred to as PM-10. Power plants are a major source of particulate matter ("PM"). Breathing PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM. PM can also reduce visibility and damage man-made materials. Reductions in PM illegally released into the atmosphere by the Defendant and others will significantly reduce the serious health and environmental effects caused by PM in our atmosphere.

JURISDICTION AND VENUE

7. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

8. Venue is proper in this District pursuant to Sections 113(b) of the Act, 42 U.S.C. §§ 7413(b), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because the Defendant resides in this District, the violations occurred in this District, and the F. B. Culley Station facility is located in this District.

NOTICES

9. On November 3, 1999 EPA issued a Notice of Violation to Defendant for Defendant's violations of the Act and the Indiana SIP. Pursuant to 42 U.S.C. §§ 7413(a)(1) and (b)(1), EPA provided a copy of the Notice of Violation to the State of Indiana.

10. The 30-day period established in 42 U.S.C. § 7413, between issuance of the Notice of Violation and the filing of this Amended Complaint based upon it has elapsed.

11. Notice of the commencement of this action has been given to the State of Indiana as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

THE DEFENDANT

12. Defendant, Southern Indiana Gas and Electric Company ("SIGECO"), owns and is an operator of the F. B. Culley Station ("Culley Station") coal fired electric generation plant in Warrick County, Indiana. Culley Station generates electricity from three steam generating boilers which are designated F. B. Culley Unit 1 ("Unit 1"), F. B. Culley Unit 2 ("Unit 2") and F. B. Culley Unit 3 ("Unit 3").

13. The Defendant is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

14. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

A. The National Ambient Air Quality Standards

15. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards ("NAAQS") requisite to protect the public health and welfare. Pursuant to Sections 108 and 109, EPA has identified and promulgated NAAQS for NO₂, SO₂, PM (now measured in the ambient air as PM-10) and ozone as such pollutants. 40 C.F.R. §§ 50.4 - 50.11.

16. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

17. At times relevant to this complaint, Culley Station was located in an area that had been classified as attainment or unclassifiable for: ozone, SO₂, NO₂ and PM/PM-10 .

B. The Prevention of Significant Deterioration Requirements

18. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the "PSD program."

19. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require states to adopt a state implementation plan ("SIP") that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

20. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

21. If a state does not have a PSD program that has been approved by EPA and incorporated into the SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

22. On August 7, 1980, EPA disapproved Indiana's proposed PSD program and incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Indiana SIP at 40 C.F.R. § 52.793, and delegated to Indiana the authority to implement the federal PSD program incorporated into the Indiana SIP. The regulations appearing at 40 C.F.R. § 52.21 are still incorporated and made a part of the Indiana SIP.

23. As set forth at 40 C.F.R. § 52.21(i), any "major stationary source" in an attainment or unclassifiable area that intends to construct a "major modification" must first obtain a PSD permit.

24. Under the PSD program, "major stationary source" is defined, *inter alia*, as fossil fuel-fired steam electric plants of more than 250 million British thermal units (Btu) per hour heat input which emit or have the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

25. Under the PSD program, "Construction" means "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions." 40 C.F.R. § 52.21(b)(8). See also 42 U.S.C. § 7479(2)(C) ("construction" includes the "modification" of the source or facility).

26. Under the PSD program, a "major modification" is defined as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(2). "Net emissions increase" means "the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change

or change in method of operation at a stationary source; and (b) Any other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i). “Significant” means a rate of emissions that would equal or exceed any of the following rates for the following pollutants: NO_x, 40 tons per year; SO₂, 40 tons per year; and PM, 25 tons per year. 40 C.F.R. § 52.21(b)(23)(i).

27. The PSD regulations at 40 C.F.R. § 52.21(j), also require a source with a major modification in an attainment or unclassifiable area to install and operate best available control technology (“BACT”), as defined in 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3), for each pollutant regulated under the Act for which the modification would result in a significant net emissions increase. 42 U.S.C. § 7475(a)(4).

28. As set forth in 40 C.F.R. § 52.21(m), any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area.

29. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the implementing regulations at 40 CFR §§ 52.21(i) and (k), require the owner or operator to obtain a permit prior to construction of a major stationary source or of a major modification so that such a source can demonstrate, *inter alia*, that the construction or modification, taken together with other increases or decreases of air emissions, will not violate applicable air quality standards.

30. As set forth in 40 C.F.R. § 52.21(n), the owner or operator of a proposed source or modification must submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21.

C. New Source Performance Standards

31. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of U.S. EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

32. Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of U.S. EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of these categories. "New sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2). These standards are known as New Source Performance Standards ("NSPS")

33. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the applicable NSPS to such source.

34. Pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411, 7414, EPA promulgated 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, which contain general provisions regarding NSPS.

35. 40 C.F.R. § 60.1 states that the provisions of 40 C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

36. 40 C.F.R. § 60.2 defines "affected facility" as any apparatus to which a standard is applicable.

37. Pursuant to Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), at 40 C.F.R. §§ 60.40a-49a (Subpart Da) EPA has identified electric utility steam generating units as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

38. EPA's general NSPS provisions, referred to in paragraph 34, above, apply to owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60. EPA has also promulgated NSPS for various industrial categories, including electric utility steam generating units. NSPS requirements for electric utility steam generating units for which construction or modification is commenced after September 18, 1978, are codified at 40 C.F.R. Part 60, Subpart Da, §§ 60.40a-49a.

39. The "affected facilities" to which Subpart Da applies are each "electric utility steam generating unit" that is capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel (either alone or in combination with any other fuel) and for which construction or modification is commenced after September 18, 1978. 40 C.F.R. § 60.40a.

40. Under Subpart Da, "steam generating unit" means any furnace, boiler, or other device, other than nuclear steam generators, used for combusting fuel for the purpose of producing steam, including fossil-fuel-fired steam generators associated with combined cycle gas turbines. 40 C.F.R. § 60.41a.

41. An "electric utility steam generating unit", under Subpart Da, means any steam electric

generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts (“MW”) electrical output to any utility power distribution system for sale. 40 C.F.R. § 60.41a.

42. “Modification” under NSPS is defined as “any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.” 40 C.F.R. § 60.2. Under NSPS, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of Section 111 of the Act, 42 U.S.C. § 7411. 40 C.F.R. § 60.14(a). Following the promulgation of 40 C.F.R.

§ 60.14(h) in July, 1992, no physical change, or change in method of operation, is treated as a modification of an existing electric utility steam generating unit if such change does not increase the maximum hourly emissions of a pollutant to which a standard applies above the maximum hourly emissions achievable at the unit during the 5 years prior to the change. 40 C.F.R. § 60.14(h).

43. Under 40 C.F.R. § 60.14, upon modification, an existing facility becomes an “affected facility” for which the applicable NSPS must be satisfied.

44. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the Act.

45. Pursuant to 40 C.F.R. § 60.7(a)(4), any owner or operator of an affected facility subject to NSPS must furnish written notification to EPA of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.

46. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility that is an electric utility steam generating unit must conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, and furnish EPA a written report of the results of such performance test.

47. Pursuant to 40 C.F.R. § 60.42a(a), the owner or operator of an electric utility steam generating unit subject to Subpart Da, may not discharge into the atmosphere from the affected facility any gases which contain PM in excess of 0.03 lb/mmBtu.

D. Indiana SIP General Permit Requirements

48. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the maintenance, implementation and enforcement of the NAAQS. Under Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution, including stationary sources in attainment and nonattainment areas of the state, as necessary to assure that NAAQS are achieved. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and

(b), upon EPA approval, SIP requirements are federally enforceable under Section 113. 40 C.F.R. § 52.23.

49. In accordance with Section 110(a)(2) of the Act, the Indiana SIP at all relevant times has included provisions prohibiting the commencement of construction or modification of any source or facility without either: (1) registering the same with the Commissioner of the Indiana Department of Environmental Management (“Commissioner”) if the construction or modification would have potential emissions less than or equal to twenty-five tons per year of any regulated pollutant and potential emissions more than five pounds per hour or twenty-five pounds per day of PM, more than ten pounds per hour or fifty pounds per day of SO₂, or more than five pounds per hour or twenty-five pounds per day of NO_x; or, (2) applying for and obtaining a construction permit for such construction or modification and, on or after December 6, 1994, a permit to operate said source or modification, from the Commissioner if the source, facility or modification has potential emissions of twenty-five tons or more per year of any regulated pollutant (326 IAC 2-1-1 (effective December 6, 1994 and September 19, 1997)) or the modification will result in a potential increase in emissions of twenty-five tons per year or more of any regulated pollutant (APC Regulation 19, Section 2 (effective February 16, 1982)), including the construction or modification of any source or facility which is a PSD modification (hereinafter “Indiana SIP General Permit Requirements”). See APC Regulation 19 (effective February 16, 1982) and 326 IAC 2-1 (effective December 6, 1994 and September 19, 1997).

50. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “source” was defined as an aggregation of one or more facilities which are located on one piece of property or on contiguous or adjacent properties, and which are owned or operated by the same

person (or by persons under common control). 325 IAC 1.1-1, Section 76 (effective December 7, 1981).

51. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “facility” was defined as, *inter alia*, any one structure, piece of equipment, installation or operation which emits or has the potential to emit any air contaminant. 325 IAC 1.1-1, Section 27 (effective December 7, 1981).

52. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “construction” was defined as “Fabrication, erection, or installation of an emission source, air pollution control equipment, or a facility.” 325 IAC 1.1-1, Section 21 (effective December 7, 1981).

53. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “modification” was defined as an addition to an existing facility or any physical change, or change in the method of operation of any facility which increases the potential or legally allowed emissions (whichever is more stringent) of any pollutant that could be emitted from the facility or which results in emissions of any pollutant not previously emitted. 325 IAC 1.1-1, Section 43 (effective December 7, 1981).

54. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “commence construction” was defined as when a facility owner or operator has either begun, or caused to begin, a continuous program of physical on-site construction of the facility or entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility. 325 IAC 1.1-1, Section 20 (effective December 7, 1981).

55. At relevant times, for purposes of the Indiana SIP General Permit Requirements,

“potential emissions” was defined as the emission of any one pollutant which would be emitted from a facility if that facility were operated without the use of pollution control equipment and based on maximum annual rated capacity unless a facility’s hours of operation are limited by enforceable permit conditions. 325 IAC 1.1-1, Section 58 (decided December 7, 1981).

56. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “regulated pollutant” was defined as any air pollutant for which an Air Pollution Control rule establishing emission limitations or requirements has been promulgated pursuant to Indiana law. 325 IAC 1.1-1, Section 69 (effective December 7, 1981).

ENFORCEMENT PROVISIONS

57. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may . . .

* * *

(C) bring a civil action in accordance with subsection (b) of this section.

58. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that “except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section”

59. Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(1), and 40 C.F.R. § 52.23 authorize the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan.

60. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411.

61. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements.

62. At all times pertinent to this civil action, Defendant was and is the owner and operator of Culley Station and each of its three boilers, designated Units 1, 2 and 3.

63. At all times pertinent to this civil action, Culley Station was: a "major stationary source,"

within the meaning of the Act for NO_x, SO₂, and PM for purposes of PSD; and, a “source” or “facility” within the meaning of the Indiana SIP General Permit Requirements. Unit 3 is an “affected facility” that is subject to the requirements of NSPS.

FIRST CLAIM FOR RELIEF
(PSD Violations: Modifications at Culley Station)

64. Paragraphs 1 through 63 are realleged and incorporated herein by reference.

65. At various times, Defendant commenced construction of major modifications at Culley Station. These major modifications included, but are not limited to, these modifications or combination of modifications: (1) the replacement of numerous components of Unit 3 in 1997, including, replacing all tubes in the secondary superheater outlet bank, replacing the reheater outlet bank and overhauling the Unit 3 turbine, generator, exciter, boiler feed pump turbine and boiler feed pump; (2) the replacement of the Unit 3 economizer bank in 1994; (3) installation of a new economizer for Unit 1 in 1991; and, (4) the installation of a new outlet section for the secondary superheater for Unit 2 in 1992. Defendant constructed additional major modifications to its plant beyond those described in this paragraph. These modifications resulted in significant net emission increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO_x, SO₂, and PM.

66. Defendant violated and continues to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477 and the PSD regulations set forth in 40 CFR § 52.21 and incorporated into the Indiana SIP at 40 CFR § 52.793, by, among other things, undertaking such major modifications and operating its facility after the modifications without obtaining a PSD permit as required by 40 CFR §§ 52.21(i)(1) and 52.21(r)(1). In addition, Defendant has not installed and

operated BACT for control of NO_x, SO₂ and PM, as applicable, as required by 40 CFR § 52.21(j). Defendant has failed and continues to fail: to demonstrate that the construction or modification would not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by 40 C.F.R. § 52.21(k); to perform an analysis of ambient air quality in the area as required by 40 C.F.R. 52.21(m); and, to submit to Indiana or EPA all information necessary to perform any analysis or make those determinations required under 40 C.F.R. § 52.21 as required by 40 C.F.R. § 52.21(n).

67. Based upon the foregoing, defendant SIGECO has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. Section 7475(a), and 40 C.F.R. § 52.21. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

68. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF
(NSPS violations: 1997 Unit 3 Replacement Activities)

69. Paragraphs 1 through 63 are realleged and incorporated herein by reference.

70. Defendant is the "owner or operator," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit, within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Unit 3, located at Culley Station.

71. Unit 3 at Culley Station is an “affected facility” under Subparts A and Da of NSPS and is subject to the NSPS, including provisions of Subpart A and Da of the NSPS.

72. During 1997, Defendant replaced numerous components of Unit 3, including, replacing all tubes in the secondary superheater outlet bank, replacing the reheater outlet bank, and overhauling the Unit 3 turbine, generator, exciter, boiler feed pump turbine and boiler feed pump. These activities, hereinafter referred to as the 1997 Unit 3 Replacement Activities, increased the gross megawatt generation capacity at Unit 3 and the maximum hourly emission rate of SO₂, NO_x and PM from Unit 3 above the maximum hourly emissions achievable at that unit during the 5 years prior to the change. The 1997 Unit 3 Replacement Activities constituted “modification” of an “affected facility” as those terms are defined in the NSPS. 40 C.F.R.

§§ 60.2 and 60.14(a). The 1997 Unit 3 Replacement Activities took place after September 18, 1978.

73. With regard to the 1997 Unit 3 Replacement Activities, Defendant failed to conduct a performance test in accordance with the procedures required by § 60.48a within 60 days after achieving the maximum production rate at Unit 3 (or within 180 days after initial startup of Unit 3) after the 1997 Unit 3 Replacement Activities, and to furnish a written report of the results of such performance test to EPA or the state of Indiana, in violation of 40 C.F.R. § 60.8.

74. On diverse occasions since the 1997 Unit 3 Replacement Activities, including at least February 12, 1999, Defendant has operated Unit 3 in such a manner that the PM emission limitation of 0.03 lb/mmBtu has been exceeded, in violation of 40 C.F.R. § 60.42a(a)(1).

75. Each day that Defendant failed to comply with each of the NSPS requirements described in this Complaint, constitutes a violation of the federal NSPS regulations, and the Act.

76. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant is subject to injunctive relief and civil penalties up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. Unless enjoined by this Court, Defendant will continue to violate the requirements of the NSPS and the Act.

THIRD CLAIM FOR RELIEF
(Indiana SIP General Permit Requirement Violations)

77. Paragraphs 1 through 63 are realleged and incorporated herein by reference.

78. At various times, Defendant commenced construction or modifications of a source, as defined in the Indiana SIP General Permit Requirement, resulting in potential emissions of 25 tons or more per year of regulated pollutants at Culley Station. These modifications included, but are not limited to, these modifications or combination of modifications: (1) the replacement of numerous components of Unit 3 in 1997, including, replacing all tubes in the secondary superheater outlet bank, replacing the reheater outlet bank and overhauling the Unit 3 turbine, generator, exciter, boiler feed pump turbine and boiler feed pump; (2) the replacement of the Unit 3 economizer bank in 1994; (3) installation of a new economizer for Unit 1 in 1991; and, (4) the installation of a new outlet section for the secondary superheater for Unit 2 in 1992. Defendant constructed additional modifications to its plant beyond those described in this paragraph.

79. Defendant violated and continues to violate provisions of the Indiana SIP General Permit Requirements with regard to modifications 2, 3 and 4 identified in paragraph 78 above by undertaking such modifications and

operating its facility after the modification without applying for and obtaining a permit to construct and operate the modification as required by 326 IAC 2-1 (effective December 6, 1994 and September 19, 1997) or APC Regulation 19 (effective February 16, 1982), as applicable.

80. As provided in 42 U.S.C. § 7413(b), and 42 U.S.C. § 7477, violations, as set forth above, subject defendant SIGECO to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 80 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendant from operating Units 1, 2 and 3 of Culley Station, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;
2. Order Defendant to remedy its past violations by, among other things, requiring Defendant to install, as appropriate, the best available control technology on Units 1, 2 and 3 at Culley Station for each pollutant subject to regulation under the Clean Air Act;
3. Order Defendant to apply for permits that are in conformity with the requirements of the PSD program and the Indiana SIP General Permit Requirements;
4. Order Defendant to comply with the NSPS provisions of the Act;
5. Order Defendant to conduct audits of its operations to determine if any additional

modifications have occurred which would require it to meet the requirements of PSD and NSPS and report the results of these audits to the United States;

6. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

7. Assess a civil penalty against Defendant of up to \$25,000 per day for each violation of the Clean Air Act and applicable regulations, and \$27,500 per day for each such violation after January 30, 1997;

8. Award Plaintiff its costs of this action; and,

9. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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